

III. REMARKS

Applicants have considered the Office Action with mailing date of November 17, 2006.

Claims 1-26 remain pending in this application. No further amendments have been made to the claims. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-5, 7-14, 16-23 and 25-26 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Duggan et al. (U.S. Patent No. 6,002,871), hereafter “Duggan.” Claims 6, 15 and 24 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Duggan in view of “The JAVA™ Virtual Machine Specification” by Lindholm, hereinafter “Lindholm”. Applicants respectfully traverse the rejections on the following grounds.

A. REJECTION OF CLAIMS 1-5, 7-14, 16-23 and 25-26 UNDER 35 U.S.C. §102(b)

With regard to the 35 U.S.C. §102(b) rejection of independent claims 1, 9 and 18 over Duggan, Applicants assert that Duggan does not teach each and every feature of the claimed invention and re-iterate previously presented arguments that Duggan does not teach, *inter alia*, “... each of the plurality of instances of the test application run within a single process”.

The Office quoted, on page 3 of the current Office Action, the definition of the term “process” from The Authoritative Dictionary of IEEE Standards Term as “[a]n address space with one or more threads executing within that address...the process that issues fork() is known as the parent...and new process created by the fork() is known as the child...”. By taking

Official Notice on the term, “process”, the Office’s seems to suggest that even if there are multiple processes, so long as these multiple (child) processes are traceable to a parent process, it would be considered a single process. On the basis of this rationale, the Office asserts, on page 3 of current Office Action, that Duggan “... appears, on its face, to describe...” a single process multi-thread situation. However, this assertion is made on face value, without any certainty that Duggan actually teaches multi-threads running in multiple child processes that originate from a parent process. To this extent, even in light of Official Notice, the Office’s inference of Duggan’s disclosure does not support the assertion that “[t]he basic module 12 ...for initiating multiple, concurrent sessions” teaches a multi-thread situation in a single process. Furthermore, Duggan does not explicitly disclose or suggest any fork() function with respect to the operation of the test tool. The quoted definition of “process” does not lend any support to the Office’s rejection of the claimed invention. Applicants assert that Duggan, at best, discloses a “... multi-threaded, reentrant....test tool”, col. 21, lines 57-61, but discloses nothing on running within a single process. As such, Duggan does not teach the claimed invention and therefore Applicants respectfully request that the Office withdraw this rejection and allow the claims.

With respect to the Office’s rationale, on page 4 of current Office Action, that “Duggan’s disclosure does not describe a separate instance of basic module 12 for each thread (concurrent session)” and hence does not describe the multi-process method illustrated in FIG. 3 in specification of claimed invention, Applicants respectfully disagree. Even assuming arguendo that the subject matter of FIG. 3 does not read on Duggan, as argued by the Office, Applicants submit that Duggan’s test tool is not a single process. This is because it does not operate solely on the basic module 12. The “... initiating of multiple concurrent sessions...” by the basic module 12 to the application under test, col. 21, lines 53 – 55, is but one of a collection of modules for triggering multiple threads on an application. As stated by the Office, on page 5 of

current Office Action, the “core module ...is independent of the command module...”, col. 3, lines 19 – 20. Although, Duggan contains “...the core module ...[which] execute[s] concurrently ... a series of command module commands...”, col. 3, lines 23 – 28, it is not explicitly disclosed that the execution of the command module is through the basic module 12. As such the commands in the command module, col. 13, lines 44 – 49, are not explicit disclosure as being triggered by the basic module. Furthermore, even if the command module of Duggan was executed through the basic module, the use of the program module structure leads away from an interpretation of the modules as being part of a single process. While “nearly all modern applications implement multiple modules and only some applications create multiple processes”, page 4 of current Office Action, the basic module 12 in Duggan initiated multiple sessions, it would not then be multiple sessions in a single process but rather, multiple processes. To this extent, even if Duggan’s method does not fall within the ambit of that illustrated in FIG. 3 of the specification of the claimed invention, it is not conclusive that Duggan does not teach a single process for executing the multiple concurrent sessions as included in the claimed invention. In view of the foregoing, the Office’s inference that Duggan’s method anticipates the claimed invention because it does not match the non-limiting illustration in the Applicant’s specification is flawed.

While Duggan discloses separate threads of multiple sessions to run concurrently, Duggan does not disclose or suggest that such separate threads run concurrently in either a single process or separate processes. Without a definite disclosure or suggestion from Duggan, the Office’s rejection is unsupported. As such the Office has failed to establish substantial evidentiary basis for a *prima facie* case of anticipation to uphold this rejection. Accordingly, Applicants respectfully request that the Office withdraw this rejection and allow the claims.

With regard to the dependent claims, Applicants enumerate the foregoing arguments in view of their respective dependency from claims 1, 9 and 18. In addition, Applicants submit that each of these dependent claims is in condition for allowance in view of the unique features recited therein. Consequently, Applicants respectfully request that the Office withdraw the rejection of all dependent claims and allow the claims.

B. REJECTION OF CLAIMS 6, 15 and 24 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection over Duggan in view of Lindholm, Applicants re-iterate previously present arguments and incorporate the above arguments with respect to claims 1, 9 and 18 to further assert that the combined teachings of Duggan and Lindholm do not teach or suggest each and every feature of the claimed invention. The Office asserts, on page 7 of the current Office Action, that a person of ordinary skill in the art would consider it "... a simple matter to implement Duggan's 'plurality of Visual Basic Code modules', col. 21, 130-46, as a plurality of JAVA objects ...[to] achieve many benefits of the JAVA language taught by Lindholm." Assuming arguendo that a person of ordinary skill modifies and implements Duggan's 'test-tool' and 'basic module' in on a JAVA Virtual Machine (JVM), without a factual showing that Duggan teaches a multi-thread operation in a single process, such an implementation would not lead the person of ordinary skill to the claimed invention. Without a likelihood of success, a person of ordinary skill will not consider modifying Duggan for implementing in a JVM. As such, the combination of Duggan and Lindholm does not teach or suggest the claimed invention. Accordingly, Applicants respectfully request that the Office withdraw this rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique feature. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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